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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th March 2007

No. 2191—li/1(B)-1/2007-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th February 2007 in Industrial Disputes Case No. 26 of 1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the M/s Utkal Refinery Limited, Jagatpur, Cuttack and its workman Shri Dharanidhar Khuntia was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 26 of 1999

Dated the 14th February 2007

Present :

Sk. Jan Hossain, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Managing Director,
M/s Utkal Refinery Limited,
Jagatpur, Cuttack.

.. First Party—Management

And

Shri Dharanidhar Khuntia
Village Tarata, P.O. Narapada,
P. S. Choudwar, Dist. Cuttack.

.. Second Party—Workman

Appearances :

For the First Party—Management

.. None

For the Second Party—Workman himself

.. Shri Dharanidhar Khuntia

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section(1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. 7382—li/1(B)-72/1999-L.E., dated the 29th May 1999 :—

"Whether the termination of services of Shri Dharanidhar Khuntia, Driver by the Managing Director, M/s Utkal Refinery Limited, Jagatpur with effect from the 4th August 1997 is legal and/or justified ? If not, to what relief Shri Khuntia is entitled ?"

2. The case of the second party, in brief, is that he joined as a Driver on the 20th March 1995 under the first party-management and discharged his duties to the utmost satisfaction of his authority till the 3rd August 1997. He alleged that on the 4th August 1997 when he went to join his duty as usual, he was not allowed to enter inside the factory premises by the security personnel. On personal enquiry he could come to know that his entry was denied by the Managing Director of the Company. It is stated in the claim statement that finding no other way the second party filed a petition before the D.L.O., Cuttack alleging termination of his service with effect from the 4th August 1997 whereupon a conciliation was taken up. In the conciliation, however, the management took the stand of unauthorised absence of the workman from duty on the 4th August 1997 and subsequently charge-sheeted him vide its letter, dated the 20th September 1997 followed by a domestic enquiry. While admitting to have participated in the enquiry, the workman has alleged that the enquiry so conducted against him was violative of the principles of natural justice, inasmuch as, no opportunity was given to him to defend himself in the enquiry and without his knowledge the Enquiry Officer completed the enquiry in an unfair and improper manner. According to the workman, the action of the management amounts to termination of his service with effect from the 4th August 1997 which besides being illegal is also unjustified and inoperative in law. He has therefore, claimed for his reinstatement in service with full back wages.

3. The first party-management in its written statement disputing the claim advanced by the second party-workman, stated *inter alia* that the second party-workman participated in the domestic enquiry but because of his deliberate non-co-operation and rowdy behaviour the enquiry could not be completed. It is in the written statement that the first party has not yet terminated the services of the second party and it has written a registered letter, dated the 11th November 2000 to him to come and join in his duties. Lastly it is pleaded that since there has been no termination of service of the workman, the reference as laid is illegal, unjust and not maintainable.

4. On the basis of the pleadings of the parties, the issue that has been framed for determination is as under :

ISSUE

- (i) "Whether the termination of services of Shri Dharanidhar Khuntia, Driver by the Managing Director, M/s Utkal Refinery Limited, Jagatpur, with effect from the 4th August 1997 is legal and/or justified ? If not, to what relief Shri Khuntia is entitled ?"

5. During hearing the management did not appear and as such it was set *ex parte* vide Order No. 74, dated the 23rd November 2006. The second party-workman sworn in an affidavit as his evidence and got marked the documents Exts. 1, 2 and 3.

6. In his affidavit evidence the second party-workman has stated that he worked as a Driver with the first party-management from 1995 till the 3rd August 1997 with utmost sincerity and to the best satisfaction of the management, but without any reason or rhyme he was denied entry into the factory premises with effect from the 4th August 1997, which according to him amounts to termination of his service. While admitting that subsequent to his refusal of employment the management wrote a letter to him for joining the work, he has stated that when he went to the factory, again the Security Guard did not allowed his entry. His aforesaid evidence on record remained unassailed due to non-participation of the management at the hearing stage. Had the management took steps and proved the misconduct, if any, of the workman, the matter would have been otherwise. In absence of any rebuttal evidence, therefore, I am constrained to hold that the refusal of employment to the second party-workman with effect from the 4th August 1997 amounts to termination of his service and accordingly it is ordered that he be taken back to employment forthwith without any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN
14-2-2007
Presiding Officer
Industrial Tribunal
Bhubaneswar

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Presiding Officer
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By order of the Governor
N. C. RAY
Under-Secretary to Government